

INTERNATIONAL PAPER CO.

IBLA 87-308 et al.

Decided June 5, 1987

Appeals from decisions of the Eugene District Office, Coos Bay District Office, and Roseburg District Office, Oregon, Bureau of Land Management, denying International Paper Company's protests to BLM's declarations that Bohemia, Inc., was the successful bidder in various BLM timber sales. OR 090-TS87-16 et al.

Vacated and remanded.

1. Contests and Protests: Generally -- Rules of Practice: Protests -- Timber Sales and Disposals

A protest of a BLM declaration that a party is the successful high bidder at a timber sale is not a protest of a timber management decision governed by 43 CFR 5003.3, as the protesting party has no way of knowing who may bid at the sale or who will submit the high bid at the time a decision to conduct a sale is published. The regulations applicable to such protests are those found at 43 CFR 4.450-2.

APPEARANCES: Jerome C. Muys, Esq., Washington, D.C., and Marilyn C. Freund, Esq., New York, New York, for International Paper Company; A. Scott Loveless, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C., and Roger W. Nesbit, Esq., Office of the Regional Solicitor, Department of the Interior, Portland, Oregon, for the [\*\*2] Bureau of Land Management; Charles F. Adams, Esq., Portland, Oregon, and John C. Ramig, Esq., Washington, D.C., for Bohemia, Inc.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

International Paper Company (International Paper) has appealed decisions of the Eugene District Office, Coos Bay District Office, and Roseburg District Office, Bureau of Land Management (BLM), denying International Paper's protests to BLM's declaration that Bohemia, Inc. (Bohemia), was the successful bidder in various BLM timber sales. 1/ These sales were conducted by BLM according to procedures set forth in 43 CFR Part 5440.

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1/ See Appendix A for a list of the sales and appeal docket numbers.

BLM advertised these sales in newspapers of general circulation as required by 43 CFR 5430.0-6. Each advertisement specified that the first published sale notice constitutes the decision document for the purposes of protests and appeals under 43 CFR Subpart 5003 and that protests of any sales listed in the notice must be filed within 15 days after **[\*\*3]** first publication of the notice. (See 43 CFR 5003.3.)

Both International Paper and Bohemia participated in the bidding on the timber sales in issue. BLM declared Bohemia to be the successful bidder. International Paper protested this declaration, claiming Bohemia to be in default on one or more of its BLM timber sales contracts at the time of the sales, and therefore disqualified from submitting bids and being declared winner of a sale, until it has "made satisfactory arrangements with the authorized officer for payment of damages due the United States." (See 43 CFR 5441.1(c).)

In its decisions rejecting the protests, BLM stated that protests of advertised timber sales under 43 CFR Subpart 5003 must be filed within 15 days of the date of the first publication of the timber sale notice. BLM found the protests had not been filed within 15 days, and rejected the protests as untimely. International Paper has appealed from those decisions.

On appeal, International Paper points out that its protests were not filed under 43 CFR 5003.3, objecting to BLM's published notice of its decisions to conduct the sales in question, but were challenges to BLM's decisions declaring Bohemia to be the successful bidder. International Paper contends that 43 CFR 5441.1(c) disqualifies Bohemia from bidding because Bohemia is in default in one or more of its BLM timber sales contracts.

In the process of review of the case files for the purpose of acting upon motions filed by BLM and appellant, it was determined that prior to addressing the substantive issues raised by appellant, this Board should address the issue of whether BLM erred when finding that appellant had not filed a timely protest. As a result, on April 15, 1987, an order was issued directing BLM to show cause why the cases should not be remanded to allow BLM to respond to the protests filed by appellant. On May 1, 1987, counsel for BLM filed a statement of non-opposition to the Board's proposed remand of the cases to BLM for further proceedings under 43 CFR 4.450-2.

[1] International Paper sought to challenge the qualifications of Bohemia to bid on the sales. It contends a protest on this basis filed under the procedures set forth in 43 CFR 5003.3 would have been premature. Prior to the conduct of the sale, International Paper would have had no way of knowing who the bidders were and who would be the successful bidder. Therefore, there is no protestable action until the bids have been opened and the high bidder is announced.

The Departmental regulation regarding protests, 43 CFR 4.450-2, provides:

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest

and such action thereon will be taken as is deemed to be appropriate in the circumstances.

Because the contracts in question have not been issued, International Paper's challenge to the qualifications of Bohemia is an objection to a proposed BLM action and constitutes a proper protest under 43 CFR 4.450-2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the District Offices are vacated and the cases are remanded for further action consistent with this decision.

R. W. Mullen  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

John H. Kelly  
Administrative Judge.

## APPENDIX A

IBLA	SALE	BLM	BLM DOCKET NO.	DOCKET NO.	NAME
SERIAL NO.		DISTRICT OFFICE			
87-308	Luyne Letzen	OR 090-TS87-16	Eugene	Lost Horizon	OR
090-TS87-17	Eugene	87-318 Herb North	OR 120-TS87-3	Coos Bay	
Tyee Access	OR 120-TS87-5	Coos Bay	87-357	Serpentine	OR 100-TS87-25
Roseburg	Blackberry Canyon	OR 100-TS87-26	Roseburg	Buckshot	
	OR 100-TS87-27	Roseburg	Addition to Plan,	OR 100-TS87-28	
Roseburg	Stage Road				
87-382	Lower Hedden Creek	OR 120-TS87-6	Coos Bay	Kneppers Wagon	
OR 120-TS87-16	Coos Bay	Jones Belieu	OR 120-TS87-27	Coos Bay	
Slide Creek	OR 120-TS87-28	Coos Bay	Sandy Hilead Salvage	OR	
120-TS87-300	Coos Bay				
87-393	Wells Vincent	OR 120-TS87-7	Coos Bay	Good, Bad, Burnt	
OR 120-TS87-17	Coos Bay	Brokers Dozen	OR 120-TS87-29	Coos Bay	
Belieu-Axe	OR 120-TS87-39	Coos Bay			
87-394	Tables Edge	OR 090-TS87-19	Eugene	Haney Heights	OR
090-TS87-20	Eugene				
87-403	Stouts Meadow	OR 100-TS87-30	Roseburg	Miner Creek	
OR 100-TS87-31	Roseburg	Hill Creek	OR 100-TS87-32	Roseburg	
Table Creek Headwaters	OR 100-TS87-33	Roseburg			
87-415	Reshuffle	OR 90-TS87-23	Eugene	Bear Ridge	OR
90-TS87-24	Eugene				

